

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

544

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals

For the

District of Columbia Circuit

No. 16,287

FILED

MAY 13 1961

Joseph W. Stewart

CLERK

FRANKLIN INVESTMENT CO., INC.,

Appellant,

v.

ROBERT E. McLAUGHLIN, et al.,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN T. BONNER

412 5th Street, N.W.
Washington 1, D. C.

Attorney for Appellant

(i)

STATEMENT OF QUESTION PRESENTED

1. Did the Act of Congress, Public Law 86-431, 74 Stat. 69, authorize the Commissioners of the District of Columbia to restrict the types and amounts of insurance which may be included in a retail installment contract for the purchase of a motor vehicle?

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 16,287

FRANKLIN INVESTMENT CO., INC.

Appellant,

v.

ROBERT E. McLAUGHLIN, et al,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant, a corporation doing business in the District of Columbia, sued the appellees, acting as the Board of Commissioners for the District of Columbia, for a declaratory judgment. The United States District Court for the District of Columbia had jurisdiction under the provisions of Title 11, Section 306, of the D. C. Code, 1951 Edition. Jurisdiction of this Court is conferred by Title 28, Section 1291, of the United States Code.

STATEMENT OF THE CASE

Appellant is a corporation engaged in the business of financing the purchase of automobiles and has been so engaged for a period of years prior to the institution of the Complaint herein. It had been the practice of automobile dealers to include in the conditional sales contract for the purchase of a motor vehicle what is known as credit insurance. Such insurance insured the purchaser against loss by virtue of illness or accident and provided that in such events the payments necessary to be made to the finance company would be made by the insurance company on behalf of the purchaser. Such insurance thereby gave the appellant additional security for the payment of the debt.

On or about April 22, 1960, the United States Congress passed what is known as "An act to provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, and for other purposes," the same being Public Law 86-431, 74 Stat. 69. That Act provides in Part 2 (e)(1) "The Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions: . . . (v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction . . ." (Emphasis supplied).

Acting under the purported authority of the aforementioned Act, the Commissioners passed certain regulations for the governing of the business of financing motor vehicles in the District of Columbia. Those regulations became effective November 1, 1960, and contained a provision, Section 304 (a), relating to insurance which a purchaser might be required to provide. The regulations did not stop at that point, however, but proceeded by inclusion of Section 304 (b) to restrict the types of insurance

that "may be included" in a contract. (Emphasis supplied). This provision prevented and continues to prevent the appellant or the seller of the motor vehicle from including the aforementioned health and accident insurance in the contract.

Appellant thereupon filed suit in the United States District Court for the District of Columbia (J.A. 1-3), seeking to have the restrictions of Section 304 (b) declared invalid in that the Commissioners were not authorized by the Act of Congress to pass regulations dealing with what might be included in the contract but were in effect restricted to regulating those types of insurance which could be required by the seller. There being no issue of fact (J.A. 5) involved, cross-motions for summary judgments were filed (J.A. 5 and J.A. 6) and resulted in an order by the Court granting a summary judgment of dismissal on behalf of the appellees (J.A.

STATUTES INVOLVED

Public Law 86-431, 74 Stat. 69, 86th Congress, Second Session, entitled, "An Act to provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, and for other purposes." Part 2, (e) (1) provides "The Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions: . . . (v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction . . ."

Regulations Governing the Businesses of Buying, Selling and Financing of Motor Vehicles in the District of Columbia, Order No. 60-2219. Section 304. Types and Amounts of Insurance.

(a) A buyer who executes a retail installment contract may be required to provide, at his own cost, insurance covering the motor

vehicle for the protection of the holder. The insurance so required shall be limited to (1) collision insurance with a deductible of at least \$50, (2) towing and labor costs, and (3) comprehensive or fire and theft, with or without combined additional coverage . . .

(b) With the agreement of the buyer, charges, not exceeding the premiums chargeable under applicable law, may be included in the retail installment contract for the cost of the following types of insurance: automobile bodily injury and property damage caused others, automobile medical payments, and credit life. No costs shall be included in the retail installment contract for any type of insurance not authorized by this section.

(c) The amount of credit life insurance shall not, at any time, exceed the greater of the scheduled or actual unpaid "TIME PRICE BALANCE."

Section 701. Penalties.

Any person who violates any provision of these regulations made pursuant to the Act of Congress approved April 22, 1960 (Public Law 86-431, 74 Stat. 69) shall be punished by a fine not exceeding \$500 or by imprisonment for not more than six months, or both . . .

STATEMENT OF POINTS

1. The Court erred in denying appellant's motion for summary judgment.
2. The Court erred in granting appellees' motion for summary judgment.

SUMMARY OF ARGUMENT

I.

The Commissioners for the District of Columbia have no inherent authority to pass legislation governing the residents therein. Any such authority must be obtained from the Congress of the United States.

II.

A regulation made by the Commissioners for the District of Columbia seeking to make particular action criminal must have clear legislative basis.

III.

The Act of Congress, Public Law 86-431, 74 Stat. 69, authorized the Commissioners to make regulations as to the types and amounts of insurance that might be required of the buyer. It did not authorize any regulation of the types and amounts of insurance which might be included in the contract.

ARGUMENT

I.

**The Commissioners for the District of Columbia Have No Inherent
Authority to Pass Legislation Governing the Residents Therein.
Any Such Authority Must be Obtained from the Congress
Of the United States**

The United States Constitution has set up the Congress of the United States as the governing and legislative body for the District of Columbia. In the past there have been many instances where that legislative ability has been delegated to the Commissioners for the District of Columbia. It has been universally held that where legislative authority is delegated, the courts will very strictly construe the said act of delegation so as to

insure that the person receiving the authority does not overstep the bounds placed on him by the delegating force. There have been many instances in this jurisdiction similar to the question presented here, and invariably this Court has very carefully scrutinized the action of the Commissioners.

In the case of Newman v. Willard's Hotel Company, 47 App. D.C. 323, the Court had to pass upon the validity of a Commissioners' regulation issued in supposed accordance with an Act of Congress. In holding the said regulation to be invalid, the Court said:

"It has thus been decided that the Commissioners are creatures of statute, possessing no inherent powers, and not constituting a municipal corporation, but being merely the executive agency of a peculiar form of municipal government created by Congress, and in which Congress has reserved to itself the power of general legislation and of municipal regulations."

In Campbell v. Galeno, 281 U.S. 599, quoted in 42 Am. Jur. 558-9, the Court stated:

"Since the power to make regulations is administrative in nature, legislation may not be enacted under the guise of its exercise by issuing a "regulation" which is out of harmony with, or which alters, extends or limits the statute being administered." (Emphasis supplied).

It is submitted that the regulation of the Commissioners unquestionably extends and alters the Act of Congress since the Act authorized them to act only regarding insurance that could be required. To the same effect is the case of St. Louis Independent Packing Co. v. Houston, 79 L. Ed. 491, wherein the Circuit Court of Appeals for the 8th Circuit held:

"The delegation of power to make rules and regulations cannot extend to the making of rules which subvert the statute reposing such power." (See Annotation Panama Refining Co. v. Ryan, 292 U.S. 388).

The regulation of the Commissioners is subject to a rule of law calling for its strict construction and, in fact, the courts are jealous in guarding the general public from acts of an administrative body which

seem greater than the authority granted by the legislature. As was said in Stout v. Clovis, 16 P. 2d 936, 16 C.J.S. 650:

"Statutes delegating legislative powers to local authorities are subject to the general presumption in favor of their validity, but are to be strictly construed against any greater delegation of legislative power than clearly appears from the language used."

The language used in the instant Act of Congress is very clear. The language used by the regulation is equally clear; and it is equally apparent on its face that the regulation is not fathered by the statute.

II.

A Regulation Made by the Commissioners for the District of Columbia Seeking to Make Particular Action Criminal Must Have Clear Legislative Basis.

The provision of Section 701, providing for a fine of \$500 or six months imprisonment, or both, clearly makes these regulations penal in nature and as such are subject to the strict construction which the courts say must be accorded a penal statute. We again have the assistance of pronouncements by this Court regarding such regulations. In the case of Curry v. District of Columbia, 14 App. D. C. 423, this Court held that a regulation passed by the Board of Commissioners exceeded the authority granted by the enabling act and the Court was very careful to point out:

"This is a penal statute insofar as it seeks to charge the appellant with a misdemeanor and it is well settled law that penal statutes must be strictly construed."

In the case of Charles S. Nelson v. United States, No. 15726, decided January 12, 1961, this Court again held that:

"Where the charge is of crime, it must have clear legislative basis." (Citing U.S. v. George, 228 U.S. 14 and 22; Shelton v. U.S., 83 U.S. App. D.C. 32)

The Court went on to say:

"In short, before one may be punished, it must appear that his case is plainly within the statute. There are no constructive offenses."

III.

The Act of Congress, Public Law 86-431, 74 Stat. 69, Authorized the Commissioners to Make Regulations as to the Types and Amounts of Insurance that Might be Required of the Buyer. It Did Not Authorize Any Regulation of the Types and Amounts of Insurance Which Might Be Included in the Contract.

This Court can perhaps take judicial notice that in the Fall of 1959, there was considerable publicity in the press and on the radio regarding abuses by used car dealers and finance companies. As a result thereof, the Commissioners sent to the Congress legislation which they felt would enable them to pass regulations to put an end to such abuses as had been called to their attention. One of the primary and key authorities which the Commissioners requested was the right to regulate the types and amounts of insurance which the seller could require or force the purchaser to buy. Following the request of the Commissioners, both the Senate and the House of Representatives held hearings on the proposed law. An examination of those hearings gives a very clear insight into the authority the Commissioners requested and the authority which the Congress granted. Nowhere in the hearings is any request made that the Commissioners have authority to regulate the types and amounts of insurance which might be included in the contract. The reverse seems obvious.

On page 22, Volume 1, hearing before the Sub-committee on the Judiciary of the Committee on the District of Columbia, S. 2895, relating to auto financing in the District of Columbia, February 11, 1960, we find the following testimony:

"SENATOR HARTKE: Turning to Section 2 (e), which begins on page 6, and sub-section (1) thereof, it provides that "the Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section including, without limitation," and then going over to Section (e) (v): "specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security."

"Now, this in and of itself deals with the question of insurance. Do you think that this could be in any way construed as interfering with the credit, the writing of credit insurance?

"MR. KORMAN: No we do not think so. Indeed there is a bill before Congress on that very subject.

* * *

"MR. KORMAN: (continues): It is our view that if that bill passes and we think it has a rather good chance of passage at this point, we believe that Congress will have then pre-empted the field on that and that that will be law governing these sort of transactions. What we had in mind in this sub-section (v) under Section 2 (e) of the bill was to set some limitations on the kinds of insurance that could be required which have no relationship whatever to the risk involved. It has been found, as will be shown by reference to the series of articles that the Chairman put in the record, that in some instances purchasers of automobiles have been required to take all sorts of insurance, which is run into the whole cost that he has to pay, which have absolutely no relationship whatever to the sale of an automobile or the risk involved in the case. And it is those sort of things that we want to be able to by regulation prohibit."

* * *

"SENATOR HARTKE: I know that is the intention, but what I am really trying to do now is clarify it so that there is no mistake on their part.

"MR. KORMAN: No, sir. We think the language in this section specifying the types, which means the kinds,

and would only permit the Commissioners to limit the kinds of insurance that may be required, and the maximum limitations of this insurance."

On page 42, of the hearings before the Committee on the District of Columbia, House of Representatives, 86th Congress, Second Session, on H. R. 9876, entitled, "Automobile Financing", February 2 and 3, 1960, the following is an excerpt from a letter of Chester H. Gray, Corporation Counsel, District of Columbia, to the Hon. John L. McMillan, dated January 21, 1960:

"... Section 2 also gives the Commissioners broad authority to make regulations governing the form and substance of instruments of security and other details involved in retail installment sales of motor vehicles. The purpose, in general, is to give the Commissioners authority to make whatever regulations are necessary to protect persons acquiring vehicles "on time", including authority to ... regulate the type and maximum amount of insurance which a seller may require of a purchaser to protect the seller ..."

"¹This is not intended to supplant the authority sought in legislation pending in the Senate on the subject of credit life insurance.)"

In the testimony of Mr. Korman, page 35, we find the following:

"MR. KORMAN: ... Specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security."

To summarize the testimony before the various Congressional Committees, we find that Mr. Korman, the principal Assistant Corporation Counsel for the District of Columbia, testified as to what powers the bill was intended to give the Commissioners. Senator Hartke, a member of the Committee, had some reservations about the language of Section 2 (e), subsection 1 (v), and asked Mr. Korman, pointblank, if they could in any way be construed as interfering with the writing of credit insurance, such as later turned up in the regulations. Mr. Korman assured the

Senator that it did not and that what the Commissioners had in mind in proposing the Act of Congress was to limit the kind of insurance that could be required. Mr. Korman further assured the Senator, "What we had in mind in this sub-section (v) under Section 2 (e) of the bill was to get some limitation on the kinds of insurance that could be required which have no relationship whatever to the risk involved . . . In some instances, purchasers of automobiles have been required to take all sorts of insurance which is run into the whole cost that he has to pay, which have absolutely no relationship whatever to the sale of an automobile or the risk involved in the case. And it is those sort of things that we want to be able to by regulation prohibit."

Senator Hartke was apparently not too reassured and further addressed himself to Mr. Korman by saying, "I know that is your intention, but what I am really trying to do now is clarify it so that there can be no mistake on their part." Mr. Korman then gave further assurances by saying that, "We think the language in this section specifying the types, which means the kinds, would only permit the Commissioners to limit the kinds of insurance that would be required and the maximum limitations of this insurance."

On January 21, 1960, Chester H. Gray submitted a draft of H. R. 9876. In his cover letter, Mr. Gray referred to Section 2 and the powers it gave the Commissioners, specifically advising the Congress that the Commissioners were by this legislation seeking the authority "to regulate the type and maximum amount of insurance which a seller may require of a purchaser to protect the seller."

Looking upon the question as a whole, it seems clear that Congress gave a definite authority to the Commissioners, that authority being in the realm of regulating insurances which the seller might force the buyer to purchase. The law seems clear from the cases cited that

such a delegation of authority must be strictly construed against any greater delegation of power than clearly appears. Such a construction makes it inevitable that the Section 304 (b) (c) of the Commissioners' regulations is invalid.

Respectfully submitted,

JOHN T. BONNER

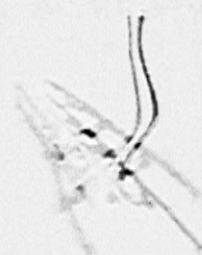
412 5th Street, N. W.
Washington 1, D. C.

Attorney for Appellant

(i)

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JOINT APPENDIX

[Filed November 1, 1960]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FRANKLIN INVESTMENT CO., INC. (
A corporation)
261 Constitution Avenue, N. W.)
Washington, D. C. ()
Plaintiff)

v. (

Civil Action No. 3628-'60

ROBERT E. McLAUGHLIN)
MARK SULLIVAN, JR.)
FREDERICK J. CLARKE ()
Constituting the Board of)
Commissioners for the District)
of Columbia ()
District Building)
14th and E Streets, N. W.)
Washington, D. C. ()
Defendants)

COMPLAINT FOR DECLARATORY RELIEF

The complaint of plaintiff, Franklin Investment Co., Inc., a corporation, respectfully shows this Honorable Court as follows:

1. Jurisdiction of this Court is based upon Title 28, Section 2201, of the United States Code.
2. That plaintiff is a District of Columbia corporation doing business in the District of Columbia with offices located at 261 Constitution Avenue, N. W.
3. That defendants constitute the Board of Commissioners governing the District of Columbia and as such are sued in their official capacity.
4. That the plaintiff was and is engaged in the business of financing motor vehicles in the District of Columbia.
5. As a proper adjunct to the financing of motor vehicles, it has sold to the persons purchasing such motor vehicles certain policies

of insurance covering the life, accidental injury, and health of the purchaser, and making premiums therefor a part of the amount due under the conditional sales contract, the cost of said insurance having heretofore been included in the retail installment contract.

6. On April 22, 1960, the United States Congress passed what is known as "An act to provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, and for other purposes", the same being Public Law 86-431. That Act provided, in part, "(e)(1) The Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions: . . . (v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee of any other person entitled to payments from a retail buyer under an instrument of security;"

7. Acting under the purported authority of the aforementioned Act of Congress, the Commissioners passed certain regulations for the governing of the business of financing motor vehicles in the District of Columbia, effective November 1, 1960. Said regulations contain the following: "Sec. 304. Types and Amounts of Insurance. (a) A buyer who executes a retail installment contract may be required to provide, at his own cost, insurance covering the motor vehicle for the protection of the holder. The insurance so required shall be limited to (1) collision insurance with a deductible of at least \$50, (2) towing and labor costs, and (3) comprehensive or fire and theft, with or without combined additional coverage (b) With the agreement of the buyer, charges, not exceeding the premiums chargeable under applicable law, may be included in the retail installment contract for the cost of the following types of insurance: automobile bodily injury and property damage caused others, automobile medical payments, and credit life. No costs shall be included in the retail installment contract for any type of insurance not authorized by this section. . . ."

8. By reason of the Commissioners' regulations mentioned above, plaintiff is no longer able to include in the retail installment contract the cost for accident and health insurance which heretofore had been included in said contracts.

WHEREFORE, plaintiff demands that the Court adjudge:

1. That the defendants neither had nor have authority from Congress to specify the types and maximum amounts of insurance which may be included in a retail installment contract, but that the said authority is restricted to specifying the types and maximum amounts of insurance which may be required in such contracts.

2. That the defendants herein have no authority to make any regulations concerning insurance which may be included to protect from loss the purchaser rather than the seller in a retail installment transaction.

3. And for such other and further relief as the nature of the case may require and to the Court may seem just and proper.

FRANKLIN INVESTMENT CO., INC.

/s/ Nathaniel Eiselman
Nathaniel Eiselman, President

/s/ John T. Bonner
John T. Bonner
Attorney for Plaintiff

DISTRICT OF COLUMBIA, ss:

Nathaniel Eiselman, being first duly sworn, on oath deposes and says: That he is the president of the plaintiff corporation; that he has read the foregoing Complaint by him subscribed and knows the contents thereof; that the matters and things therein contained of his own personal knowledge are true, and those stated upon information and belief, he believes to be true.

/s/ Nathaniel Eiselman

[JURAT November 1, 1960]

[Filed November 22, 1960]

ANSWER OF DEFENDANTS

First Defense

The complaint for declaratory relief fails to state a claim against these defendants upon which relief can be granted.

Second Defense

1. The defendants admit that the jurisdiction of this Court to entertain a complaint for declaratory relief is founded on Title 28, Section 2201, of the United States Code.
2. The defendants, upon information and belief, admit the allegations contained in paragraph numbered 2 of the complaint.
3. The defendants admit the allegations contained in paragraph numbered 3 of the complaint.
4. The defendants, upon information and belief, admit the allegations contained in paragraph numbered 4 of the complaint.
5. In answer to paragraph numbered 5 of the complaint, the defendants admit all the allegations contained therein, except the allegation which characterizes the sale of certain policies of insurance as a "proper" adjunct to the financing of motor vehicles. Inasmuch as said allegation represents a conclusion of the pleader no answer is required. However, if answer be required, the said allegation is denied.
6. These defendants admit the allegations contained in paragraph numbered 6 of the complaint.
7. These defendants admit the allegations contained in paragraph numbered 7 of the complaint, except the allegation which characterizes the action of the Commissioners in passing certain regulations for the governing of the business of financing motor vehicles in the District of Columbia, as performed under "purported" authority of an Act of Congress. Said allegation represents the conclusion of the pleader and requires no answer of these defendants. However, if answer be required, that allegation is denied.
8. The defendants admit the allegations contained in paragraph numbered 8 of the complaint.

Further answering the complaint, defendants deny all allegations not specifically admitted or otherwise answered.

/s/ Chester H. Gray
Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D. C.

/s/ George H. Clark
Assistant Corporation Counsel, D. C.
Attorney for Defendants
District Building
Washington 4, D. C.

(Certificate of Service)

[Filed November 23, 1960]

MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff herein by its attorney, John T. Bonner, and moves the Court to enter a summary judgment herein in favor of the plaintiff against the defendants for the relief requested in the complaint, and for cause refers the Court to the Points and Authorities and Exhibits attached hereto and made a part hereof.

/s/ John T. Bonner
Attorney for Plaintiff

(Certificate of Mailing)

[Filed December 16, 1960]

MOTION OF DEFENDANTS McLAUGHLIN, SULLIVAN AND CLARKE TO DISMISS, OR FOR SUMMARY JUDGMENT

The defendants move the Court to dismiss the complaint, or in the alternative, for summary judgment, and as reasons therefor say:

1. The complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's motion for summary judgment together with the exhibits attached thereto and the memorandum of points and authorities in support thereof, and this motion along with the memorandum of points and authorities in support thereof demonstrate that there is no genuine

issue as to any material fact, and that the defendants are entitled to judgment as a matter of law.

/s/ Chester H. Gray
Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D. C.

/s/ George H. Clark
Assistant Corporation Counsel, D. C.
Attorneys for defendants
District Building
Washington 4, D. C.

(Certificate of Service)

[Filed January 27, 1961]

ORDER

Upon consideration of the Plaintiff's Motion for summary judgment, and the Defendants' cross-motion for summary judgment, and after hearing oral argument of counsel with respect thereto, and after a review of the points and authorities filed by each of the parties, and the Court finding no issue of material fact, it is this 27th day of January, 1961,

ORDERED, that the Plaintiff's motion for summary judgment be, and the same hereby is, denied; and

IT IS FURTHER ORDERED, that the Defendants' motion for summary judgment be, and the same hereby is, granted.

/s/ Leonard P. Walsh
Judge

[Filed February 23, 1961]

NOTICE OF APPEAL

1. The name and address of appellant is:

Franklin Investment Co., Inc.
A corporation
261 Constitution Avenue, N. W.
Washington 1, D. C.

2. The appellant's attorney is:

John T. Bonner
412 5th Street, N. W.
Washington 1, D.C.

3. The name and address of appellees:

Robert E. McLaughlin
Mark Sullivan, Jr.
Frederick J. Clarke,
Constituting the Board of Commissioners for
the District of Columbia
District Building
Washington 4, D. C.

4. Appellees' counsel is:

Corporation Counsel of the District of Columbia
District Building
Washington 4, D. C.

5. On January 27, 1961, Judge Leonard P. Walsh of the United States District Court for the District of Columbia denied appellant's Motion for Summary Judgment in the above-entitled cause, and granted appellees' Motion for Summary Judgment therein.

Appellant hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the above-stated order.

/s/ John T. Bonner
Attorney for Appellant

BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit *United States Court of Appeals
For the
District of Columbia Circuit*

No. 16, 287

FILED

JUN 23 1961

Joseph W. Stewart
CLERK

FRANKLIN INVESTMENT CO., INC.,

Appellant,

v.

ROBERT E. McLAUGHLIN, et al.,

Appellees.

**Appeal From The United States District Court
For The District Of Columbia**

CHESTER H. GRAY,
Corporation Counsel, D. C.

MILTON D. KORMAN,
Principal Assistant
Corporation Counsel, D. C.

HUBERT B. PAIR,
Assistant Corporation Counsel, D. C.

JOHN R. HESS,
Assistant Corporation Counsel, D. C.
Attorneys for Appellees,
District Building,
Washington 4, D. C.

STATEMENT OF QUESTION PRESENTED

In the opinion of appellees, the question is:

Did not the Congress, by Public Law 86-431, vest in the Commissioners of the District of Columbia authority to promulgate a regulation limiting the types of insurance that may be included in any retail installment contract for the sale of a motor vehicle?

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<u>The Commssioners, did not exceed their authority</u> <u>when, by regulation, they limited the types of</u> <u>insurance that may be included in a retail in-</u> <u>stallment contract for the sale of a motor</u> <u>vehicle.</u>	5
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STATUTES CITED

- * Public Law 86-431, approved April 22, 1960,
74 Stat. 69 i, 1, 6, 7, 8, 9, 10

REGULATION CITED

- Regulations Governing the Businesses of Buying, Selling and
Financing of Motor Vehicles in the District of Columbia .
Section 304 4, 6, 7, 8, 9, 10, 11

* Cases and authorities chiefly relied upon are marked by asterisks.

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 16,287

FRANKLIN INVESTMENT CO., INC.,

Appellant,

v.

ROBERT E. McLAUGHLIN, et al.,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEES

STATUTES INVOLVED

Public Law 86-431, approved April 22, 1960, 74 Stat. 69:

Section 1 (5):

" 'Instrument of security' means any promissory note, retail installment contract, or other written promise to pay the unpaid balance of the total amount to be paid by a retail buyer of a motor vehicle."

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Section 1 (9):

" 'Retail installment contract' means a contract entered into in the District or entered into by a seller licensed or required to be licensed by the District evidencing a retail installment transaction pursuant to which the title to or a lien on or security in the motor vehicle, which is the subject matter of such transaction, is retained or taken to secure the retail buyer's obligations. The term includes a chattel mortgage, conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the bailment or lease."

Section 1 (10):

" 'Retail installment transaction' means any transaction in which a retail buyer purchases a motor vehicle for a price in excess of the cash sale price agrees to pay part or all of such price in one or more deferred installments."

* * * *

Section 2 (e) (1):

"The Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

(i) governing the form and substance of instruments of security;

(ii) requiring that installment payments under instruments of security be made in substantially equal amounts and at regular intervals except (1) that the interval for the first installment payment may be longer than the other intervals; (2) that the final installment payment may be less in amount than the preceding installment payments; (3) that where a buyer's livelihood is dependent upon seasonal or intermittent income, one or more installment payments in the schedule of payments included in any such instrument of security may be reduced or omitted; and (4) that any contract covering a new motor vehicle to be used primarily as a demonstrator sold to a bona fide motor-vehicle salesman employed by the seller shall be exempt from the requirement that installment payments be in substantially equal amounts;

(iii) requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited;

(iv) establishing maximum delinquency, collection, repossession and other charges;

(v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security;

(vi) respecting the manner and methods of the sale or disposition of repossessed motor vehicles under such conditions, including, without limitation, rights of redemption, as the Commissioners deem advisable;

(vii) requiring the books and records of persons engaged in the business of financing retail installment transactions to be subject to production for examination by the Commissioners." [Emphasis supplied]

* * * *

REGULATION INVOLVED

Regulations Governing the Businesses of Buying, Selling and Financing of Motor Vehicles in the District of Columbia,

Section 304. Types and Amounts of Insurance

"(a) A buyer who executes a retail installment contract may be required to provide, at his own cost, insurance covering the motor vehicle for the protection of the holder. The insurance so required shall be limited to (1) collision insurance with a deductible of at least \$50, (2) towing and labor costs, and (3) comprehensive or fire and theft, with or without combined additional coverage. The charges for such insurance shall not exceed the premiums chargeable therefor under applicable law. No dealer shall execute any retail installment contract and no sales finance company shall purchase any such contract if such contract contains a charge for single interest insurance protecting the interest of the holder only, unless the policy or policies of such insurance contain a waiver of subrogation rendering it impossible for the insurance company to collect from the buyer any loss which it may pay to the holder.

"(b) With the agreement of the buyer, charges, not exceeding the premiums chargeable under applicable law, may be included in the retail installment contract for the cost of the following types of insurance: automobile bodily injury and property damage caused others, automobile medical payments and credit life. No costs shall be included in the

retail installment contract for any type of insurance not authorized by this section.

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SUMMARY OF THE ARGUMENT

The Congress has empowered the Commissioners of the District of Columbia to make and enforce all regulations which the Commissioners deem necessary to prevent unconscionable practices surrounding the retail installment sales of motor vehicles in the District.

Since the Commissioners, following a public hearing, found it necessary to limit by regulation the types of insurance that may be included in the installment contract, and since appellant does not challenge the necessity for nor the reasonableness of the regulation, such regulation is obviously valid in view of the above broad congressional grant of authority.

ARGUMENT

The Commissioners did not exceed their authority when, by regulation, they limited the types of insurance that may be included in a retail installment contract for the sale of a motor vehicle.

As a result of information received through individual citizen complaints, a series of articles in the Evening Star newspaper, and a public hearing by the Law Enforcement Council relative to widespread abusive

practices surrounding the retail installment sales of motor vehicles in the District of Columbia, the Commissioners recommended, and the Congress, following extensive public hearings, enacted a law "[t]o provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, and for other purposes."¹ Section 2 (e) (1) of this Act gave the Commissioners authority to "make and enforce such regulations as they in their discretion deem appropriate * * * to prevent unconscionable practices in connection with retail installment transactions * * *."

On October 20, 1960 the Commissioners promulgated extensive regulations governing the businesses of buying, selling and financing of motor vehicles in the District of Columbia. Section 304 of the Regulations provides in pertinent part as follows:

"(a) A buyer who executes a retail installment contract may be required to provide, at his own cost, insurance covering the motor vehicle for the protection of the holder. The insurance so required shall be limited to (1) collision insurance with a deductible of at least \$50, (2) towing and labor costs, and (3) comprehensive or fire and theft, with or without combined additional coverage. The charges for such insurance shall not exceed the premiums chargeable therefor under applicable law * * *.

"(b) With the agreement of the buyer, charges, not exceeding the premiums chargeable under applicable law, may be included in the retail installment contract for the cost of the following types of insurance: automobile bodily injury and property damage caused others, auto-

¹ Public Law 86-431 approved April 22, 1960, 74 Stat. 69.

mobile medical payments, and credit life. No. costs shall be included in the retail installment contract for any type of insurance not authorized by this section. [Emphasis supplied]

Appellant alleges in its complaint that it is engaged in the business of financing motor vehicles in the District of Columbia, and in connection therewith has sold to persons purchasing motor vehicles credit health and accident insurance policies and included the cost of the premiums thereof in the retail installment contract as an item to be financed along with the automobile (J. A. 1-2). In its brief (page 2) appellant asserts that this type of insurance provides the finance company additional security for the payment of the debt. Also, it correctly states that as a result of Section 304 (b), supra, a charge for such insurance can no longer be included in the conditional sales contract as an item to be financed.

Appellant does not challenge the necessity for, nor the reasonableness of, Section 304 (b) of the Regulations as a means of correcting the abusive practices which had surrounded the sale of credit health and accident insurance in connection with the sale of a motor vehicle, and the inclusion of the cost of such insurance in the installment sales contract. It merely contends that the regulation is not "fathered" by Public Law 86-431, supra, because, according to its view, the Commissioners' sole authority stems from Section 2 (e) (1) (v) which specifically authorizes the Commissioners

to specify the types and maximum amounts of insurance which may be required by the seller from the retail buyer, and therefore, does not authorize the Commissioners to prohibit other types of insurance from being included in the contract for the sale of the vehicle.

Appellant completely ignores the fact that the authority to specify the types and maximum amounts of insurance which may be required of a buyer is only one of seven powers specifically included by the Congress within, but "without limitation" upon, the broader power granted the Commissioners

"* * * to make and enforce such regulations as they in their discretion deem appropriate * * * to prevent unconscionable practices in connection with retail installment transactions * * *."

Certainly the foregoing grant of authority is sufficient upon which to bottom Section 304 (b) of the Commissioners' Regulations.

Appellant relies heavily upon the legislative history of Public Law 86-431 in an effort to support its contention that the Congress, in enacting said law, did not empower or intend to empower the Commissioners to promulgate a regulation limiting the types of insurance that may be included in a retail installment contract for the sale of a motor vehicle. However, "[i]t is elementary in the law of statutory construction that, absent ambiguity or an absurd or unreasonable result, the literal language of a statute controls and resort to legislative history is not only unnecessary but improper."

Elm City Broadcasting Corporation v. United States, 98 U. S. App. D. C. 314, 319, 235 F.2d 811, 816. Appellant has neither alleged nor made any showing that the statute is ambiguous in any respect.

Nevertheless, a consideration of the legislative history of Public Law 86-431 provides appellant with little, if any, comfort. Appellant refers to statements made by certain witnesses before the Subcommittee on the Judiciary of the Committee on the District of Columbia at the public hearing on the proposed legislation. It argues that the Congress was concerned that the Commissioners of the District of Columbia, under the proposed grant of authority, intended to interfere with and control the writing of credit insurance. Appellant says that Senator Hartke revealed this anxiety in his questioning of Mr. Korman, a witness before the Subcommittee. However, it should be noted that Section 304 (b) of the Regulations does not prohibit or interfere in any respect with the writing of credit insurance. That section merely prohibits the inclusion in the retail installment contract of the cost of such insurance as an item to be financed. Furthermore, an examination of Mr. Korman's testimony reveals that the Senator's concern was not as ascribed to him by the appellant, but rather was bottomed on his apprehension that the Commissioners desired to control the rates of charges for credit insurance under the authority of the proposed Act. This is borne out by the following excerpt from the testimony of Mr. Korman, which appears

on page 24 of the transcript of the hearing before the Subcommittee on February 11, 1960. The following exchange occurred:

"Senator Hartke. Yes. Let me come back to this whole thing. What I am trying to find out is whether this will give the Commissioners the power to fix the rate of insurance charges by regulation.

"Mr. Korman. No, sir. That is subject to regulation by the Superintendent of Insurance under the general insurance laws." [Emphasis supplied]

On page 10 of appellant's brief reference is made to a letter of the Corporation Counsel of the District of Columbia addressed to the Honorable John L. McMillan. Appellant quotes a portion of the letter and concludes therefrom that the Commissioners were seeking authority only to regulate the types and maximum amounts of insurance which the seller may require of the purchaser. However, a fair reading of that portion of the letter referred to by appellant clearly indicates that the Commissioners sought authority "to make whatever regulations are necessary to protect persons acquiring vehicles 'on time', including authority to" regulate the type and amounts of insurance that could be required of the purchaser. [Emphasis supplied]

Nowhere has appellant shown that Public Law 86-431 limited the authority of the Commissioners to the extent that Section 304 (b) of the Regulations is plainly inconsistent with the Act. Absent such a showing,

it is well settled that the regulation should be sustained. Commissioner of Internal Revenue v. South Texas Lumber Co., 333 U. S. 496, 68 S. Ct. 695, 92 L. Ed. 831; Fawcus Machine Company v. United States, 282 U. S. 375, 51 S. Ct. 144, 75 L. Ed. 397.

CONCLUSION

In view of all the foregoing authority, it is respectfully submitted that Section 304 (b) of the Regulations in question has a valid legislative basis. The judgment of the lower court should, therefore, be affirmed.

Respectfully submitted,

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